IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.476 OF 2005
IN
APPEAL FROM ORDER NO.398 OF 2005

Shrichand Vishandas Raheja & Anr. ...Applicants.

vs.

Damji Jethalal Gala & Ors. ...Respondents

CORAM: A.S.OKA,J.
DATE : APRIL 29,2005.

P.C.:

. Not on board.

1. Rule. Respondents waive service. An Affidavit dated 27th April 2005 has been filed by the Appellant No.2 on behalf of the Appellant No.1 and himself. Paragraph No.2 of the said Affidavit reads thus :

> (2) I say that the Appellants have filed the above Appeal from Order and Judgment dated 17th January 2005 passed by His Honour Judge, Shri K.U.Chandiwal, whereby the Trial Judge has ordered the Respondent No.1 (Original Plaintiff in the suit) shall not be removed from his shop without providing alternate shop of the equivalent area. The area which has been directed is 194 sq.ft. of ground floor and 190 sq.ft. of first floor. I say that actually the dispute is between original Plaintiff (Respondent No.1) and the MHADA. However, with a view not to stop the construction and development work and without prejudice to the rights and contentions of the Appellants, the Appellants are ready and willing to provide a temporary alternate accommodation to Respondent No.1 in transit camp of equal area as per the said order dated 17th January 2005 i.e. 194 sq.ft. ground floor and 190 sq.ft. of 1st floor. I say that the transit camp for providing temporary alternate accommodation will be constructed on the same plot where Respondent No.1 is having a shop. The area where the temporary structure/transit camp for providing alternate accommodation to Respondent No.1 is to be constructed is shown in red colour in

> the plan annexed hereto as Annexure-1. Respondent No.1 is presently occupying a shop in part of the area shown in green colour in the plan annexed hereto as Annexure-1."

2. Today one more Affidavit is filed by the Appellant No.2 which is stated to be filed for himself and on behalf of the Appellant No.1. In paragraph No.2 of the said Affidavit it is stated thus :

> "2. I say that the said temporary alternate accommodation in the transit camp will be constructed after obtaining necessary permission and approval from the Brihanmumbai Mahanagarpalika on the same plot where Respondent No.1 is having a shop as shown in the plan annexed to my said Affidavit dated 27th April 2005."

3. The statements made in both the paragraphs extracted above are in the form of undertakings. The said statements are accepted as undertakings of the Appellants.

4. In view of this position, a case is made out for grant of stay. Grant of stay will not permit the Appellants to dispossess the original Plaintiff from the premises in his possession and the Appellants will be entitled to evict the original Plaintiff only after temporary alternate accommodation offered to the Plaintiff in terms of undertakings accepted today is ready in all respects for occupation. As and when the said temporary alternate accommodation is ready, the Appellants will send intimation in writing to the original Plaintiff at the addresses of the

original Plaintiff in the cause title of the suit calling upon the Plaintiff to occupy the temporary accommodation. The Appellants and the Respondent No.2 will not dis-possess the original Plaintiff for a period of four weeks from the date of service of the said intimation in writing to the original Plaintiffs.

5. Subject to what is stated above, Civil Application is allowed in terms of prayer clause (a).

6. Pendency of the Appeal will not operate as stay to the suit. The learned Trial Judge will proceed with the hearing of the suit.

JUDGE.